

Culinary Foods, Inc. and Production and Maintenance Union, Local 101, an affiliate of Chicago Truck Drivers Union (Independent), Petitioner and Local 100-A United Food and Commercial Workers International Union, AFL-CIO.¹ Case 13-RC-19659

April 16, 1998

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FOX, LIEBMAN, AND BRAME

The National Labor Relations Board, by a three-member panel, has considered objections to an election held July 11, 1997, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 464 for the Petitioner, 403 for the Intervenor, 31 against the participating labor organizations, with 9 challenged ballots, an insufficient number to affect the results, and 8 void ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted as modified the hearing officer's findings and recommendations, and finds that a certification of representative should be issued.

In her report, the hearing officer recommended that the Intervenor's Objections 1 and 2² be overruled and that the Petitioner be certified. Objection 1 alleged that Petitioner's agents had threatened voters that the Petitioner would call the Immigration and Naturalization Service (INS) into the plant if it did not win the election. The hearing officer found that those making such statements (employees Villanueva, Briseno, and Negrete) were not agents of the Petitioner but employees who supported it and that the statements did not warrant setting aside the election. We agree with the hearing officer on both counts.

Contrary to the Intervenor's contentions, the record evidence does not establish that employee-members of the self-organized employee committee that contacted the Petitioner and assisted in the Petitioner's subsequent organizing campaign were agents of the Petitioner under the standard set in *Advance Products Corp.*, 304 NLRB 436 (1991); *United Builders Supply Co.*, 287 NLRB 1364 (1988).³

¹ This union is the Intervenor here.

² In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation to overrule the Intervenor's Objection 2.

³ Member Brame joins his colleagues in finding that the Intervenor has failed to meet its burden of showing that employee supporters of the Petitioner acted as its agents here. But he finds it unnecessary to pass on the Board's decisions in *Advance Products* and *United Builders*, where the Board found no agency relationship based on much stronger facts supporting agency. In *Advance Products*, the alleged agent served as one of seven members of a formally des-

The Intervenor disputes the hearing officer's determination that "no more than approximately 20 employees" heard about alleged threats made by employee supporters of the Petitioner that the Petitioner would contact the INS if it lost the election. Based on our review of the record, we conclude that the Intervenor's best evidence of dissemination shows that at most 45 employees in a unit of 1158 eligible voters (less than 4 percent of the unit) heard about the statements.⁴ Given the relatively limited dissemination of these statements, we find that they did not create a general atmosphere of fear and reprisal rendering a fair election impossible. See *Mike Yurosek & Sons*, 225 NLRB 148 (1976), *enfd.* 597 F.2d 661 (9th Cir. 1979); *NLRB v. Eskimo Radiator*, 688 F.2d 1315 (9th Cir. 1982). Cf. *Q. B. Rebuilders*, 312 NLRB 1141 (1993) (overturning election where threats to call the INS on employees who did not vote in favor of the union were disseminated to at least one-third of the bargaining unit, and one-third of the bargaining unit witnessed a coworker's actual detention and removal by the INS from the employer's facility the day before the election).

In adopting the hearing officer's recommendation that the Intervenor's Objection 1 be overruled, however, we do not rely on statements made by the hearing officer, which refer to employees' subjective reactions to the alleged threats involving calling the INS into the plant if the Petitioner lost the election. See *Picoma Industries*, 296 NLRB 498, 499 (1989) ("[T]he subjective reactions of employees are irrele-

gnated in-house organizing committee whose responsibilities included, inter alia, answering employees' questions about the union. In *United Builders*, inter alia, the alleged agent was a, if not the, leading union supporter; was asked by the union's representative to set up meetings at which the union agent spoke; and arranged certain other meetings, apparently independent of any union representative.

⁴ The figure of about 45 employees (which includes the union supporters who purportedly made the statements as well as those who heard them) is derived from the following testimony: employee Jiminez heard the statement from Briseno and she then told this to 3 coworkers; employee Herrera was told the statement by Negrete in the presence of Villanueva and Briseno and 6 other employees and she told 3 other employees; employee Patino heard the statement (from an employee she called Rosario Nunes, the Intervenor claims this is alleged Petitioner Agent Rosario Negrete) and she told 4 employees; employee Rios heard the statement from Villanueva in a group of 10 other employees; employee Maldonado heard the statement, made in the presence of 5 other employees, from an employee named "Chaio" (whom Maldonado said was on the organizing committee but who is not otherwise identified); Maldonado heard a similar statement in the presence of 3 other employees by an employee named "Jaime" (whom Maldonado also claimed was on the organizing committee but who is not otherwise identified); and Maldonado said an employee named "Maria" asked him whether the INS would come to the plant if the Petitioner lost. We have not considered employee Zavala's statement that he heard organizing committee members Villanueva, Briseno, and Negrete say that if the Petitioner did not win the election "there were going to be problems" because the statement makes no reference to the INS and is ambiguous.

vant to the question of whether there was, in fact, objectionable conduct.'').

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Production and Maintenance Union, Local 101, an affiliate of Chicago Truck Drivers Union (Independent), and that it is the exclusive collective-

bargaining representative of the employees in the following appropriate unit:

All full time and regular part time production employees, including working supervisors employed by the Employer at its facility currently located at 4201 S. Ashland Avenue, Chicago, Illinois 60609, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.